

Department of Permits and Development Management  
111 West Chesapeake Avenue  
Towson, Maryland 21204  
Baltimore County, Maryland

In the Matter of

Civil Citation No. 54909

Rex A. Frost  
54 Windemere Parkway  
Phoenix, MD 21131

1678 Poles Road

Respondent

FINDINGS OF FACT AND CONCLUSIONS OF LAW  
FINAL ORDER OF THE CODE ENFORCEMENT HEARING OFFICER

This matter came before the Code Enforcement Hearing Officer for the Department of Permits and Development Management on September 7, 2009 for a Hearing on a citation for violations under the Baltimore County Code (BCC) section 21-7-302 B; 35-2-304 (b)(1), International Building Code (IBC) 2006 section 105.1, 106.1, 1009.1; National Electrical Code (NEC) 2008 section 230, failure to obtain a structural engineer's evaluation for rear wall and supporting foundation, failure to obtain permits for all repairs, for improper corrections to service cable, needs to be replaced with new service cable on residential property zoned DR 5.5 known as 1678 Poles Road, 21221.

On September 10, 2009, pursuant to Baltimore County Code §3-6-205, Inspector Gary Hucik issued a Code Enforcement & Inspections Citation. The citation was sent to the Respondent by 1<sup>st</sup> class mail to the last known address listed in the Maryland State Tax Assessment files.

The citation proposed a civil penalty of \$43,000.00 (forty three thousand dollars).

The following persons appeared for the Hearing and testified: Rex Frost, Respondent, Gary Hucik, Baltimore County Building Inspections Inspector and Kay Hughes, Baltimore County Electrical Inspections Inspector.

After proper consideration of all the evidence and testimony presented, the Hearing Officer finds:

A. A Correction Notice was issued on December 24, 2008 for building code violations, requesting that property owner secure a structural engineer's evaluation for rear wall and supporting foundation; secure required permits for repair; repair rear stairs and treads; obtain electrical permit for replacement of existing service entry cable; remove exterior outlet not to code. A Citation was issued on February 4, 2009 for failure to correct structural defects; failure to correct defective rear stairs; failure to replace defective electrical service entry cable, and failure to remove exterior outlet not to code. That Citation was not enforced. This Citation was issued on September 10, 2009.

B. Baltimore County Building Inspector Gary Hucik testified that Respondent Frost has not complied with the County's requests to secure a structural engineer's evaluation for the rear wall and foundation, and repair the electrical service cable. The house is an investment property and is currently vacant. This is an end unit townhouse attached to other units. Large cracks are visible in the foundation and the brick walls. Electrical Inspector Kay Hughes testified that the electrical code requires that cables be free of hazard, and that the service cable appears to be wrapped in tape instead of covered with proper insulation. Photographs in the file show large cracks on the foundation and on the brick walls. Photographs in the file show electrical service wiring with missing insulation, with tape substituting for insulation, and with plumbing PVC pipe covering the wiring instead of proper covering that meets code requirements.

C. Respondent Rex Frost testified that he has owned the house for thirty years. The cracks are settlement cracks. The cracks were patched in January 2009 and have not reopened. He does not believe a structural problem exists. The electrical service cable was reconnected on September 8, 2009 by BGE and the technician said the cable was OK. He does not agree that the cable needs to be replaced.

D. Review of the file following this Hearing found a letter dated December 24, 2008 from Timothy Kotroco, Director of the Baltimore County Department of Permits & Development Management, to Respondent Frost "Re: Structural conditions and other code issues at 1678 Poles Road." In that letter, which accompanied the Correction Notice, Director Kotroco stated, "The Department of Permits & Development Management received a complaint that the two-story brick end of group townhouse that you own at 1678 Poles Road is slowly pulling away from the house next door which shares a party wall." The letter cited the major findings of the County's inspection, including

"1. Significant separation at mortar joints in the rear wall indicative of movement in the foundation" and

"3. The electric service cable has deteriorated to the point that there is no sheathing or covering."

The letter further stated,

"A Correction Notice is enclosed which requires that you take the necessary steps to correct the above problems by February 1, 2009. As a part of that correction, you must provide me with a report from a licensed professional structural engineer that must describe the cause and any required correction to stabilize the rear wall and other areas of the exterior walls and foundation which show more than superficial cracking. Such a report must also be delivered to me by February 1, 2009."

E. Further review of the file shows that this letter was based on a written memorandum dated December 15, 2008, from John Altmeyer, Supervisor of Code Inspection and Enforcement, to the Building Engineer stating in part, "The rear wall of this end of group townhome shows evidence of a non typical structural event in progress. There are step cracks following the masonry veneer from the kitchen window on the rear wall upward about 3 feet. The lower foundation wall in the areaway exhibits structural cracks; which also lead to the fact of a structural deterioration in progress. To address these issues, an evaluation by a licensed structural engineer is necessary."

F. It is clear from the evidence presented that Respondent Frost has failed to respond appropriately to the County's notices and requests. The County's Correction Notice and accompanying letter notified Respondent that the house has a structural deficiency that requires correction. The house is attached to other row townhouses and is undoubtedly causing damage and deterioration to the neighboring structures. Respondent is required by law to maintain this rental property at least in conformance with county code standards, including maintaining the exterior of the structure in good repair; keeping supporting structural members structurally sound, free of deterioration, and capable of safely bearing the loads imposed upon them; and maintaining foundation walls structurally sound and free from open cracks and breaks that would be hazardous or unsafe or could admit rodents or other pests. BCC Section 35-5-208. County law provides that the County Building Engineer shall require an owner to maintain, replace or repair any exterior walls or other vertical supports that the Building Engineer, after inspection, finds to exhibit deterioration. BCC Section 35-2-404. The Building Engineer works within the Department of Permits & Development Management and supervises the code enforcement inspectors who have issued the notices to Respondent.

G. The electrical service cables are visibly deteriorated and unsafe. Respondent's stated belief that the wiring is adequate, and his statement that a BGE technician approved the wiring, is not sufficient to overcome the clear testimony by Baltimore County electrical inspectors that the wiring is unsafe. The County's electrical inspectors have the legal authority and responsibility to make this determination. BCC 21-7-302 ("On finding defective or dangerous installations, the enforcement officer shall notify and order the owner or occupant of the premises and the licensee by whom or under whose supervision the work was done to make the necessary corrections.")

H. Respondent's failure to comply with the County's notices and orders is unreasonable and egregious, and a civil penalty is entirely appropriate. This is an investment property and Respondent has a legal obligation to maintain it in good condition. Any further delay in correcting the obvious structural problems would be unfair to the adjoining property owners and might be dangerous to public safety. Respondent's stated belief that the cracks are minor settlement cracks and that there is no serious structural problem is not supported by the evidence; and in any event, the Building Engineer has the legal authority and responsibility to make this determination. Any further delay in correcting the dangerous electrical wiring conditions would be unfair to the adjoining property owners and might be dangerous to public safety. Respondent's stated belief that the wiring is safe and

adequate is not supported by the evidence; and in any event, the County's electrical inspectors have the legal authority and responsibility to make this determination.

I. Because compliance is the goal of code enforcement, Respondent will be given one more opportunity to comply and to obtain a reduced civil penalty. If Respondent does not obtain the required services of a structural engineer and a licensed electrician, make corrections, and provide required reports to the County within the time provided below, the County will be directed to do so, at Respondent's expense.

IT IS ORDERED by the Code Enforcement Hearing Officer that a civil penalty be imposed in the amount of \$25,000.00 (twenty-five thousand dollars).

IT IS FURTHER ORDERED that the civil penalty will be REDUCED to \$5,000 (five thousand dollars) if Respondent corrects all violations by (1) obtaining and submitting to County by October 30, 2009, the required written evaluation report by a licensed professional structural engineer; (2) making by November 30, 2009 all necessary repairs directed by the Building Engineer after review of that report; (3) making by October 30, 2009 all necessary repairs to electrical service cable and wiring, pursuant to required electrical permit and with all required County inspections.

IT IS FURTHER ORDERED that after October 30, 2009, if the County has not received the required written evaluation report by a licensed professional structural engineer, the County shall engage an appropriate professional to perform this service and shall enter the property to conduct the required evaluation, at Respondent's expense.

IT IS FURTHER ORDERED that after October 30, 2009, if Respondent has not made the required corrections to the electrical service cables, including issuance of a County electrical permit and completion of required inspections, the County may enter the property for the purpose of making the required repairs, at Respondent's expense.

IT IS FURTHER ORDERED that if not paid within thirty days of billing, the civil penalty AND any expenses incurred by Baltimore County, as authorized above, shall be imposed and placed as a lien upon the property.

IT IS FURTHER ORDERED that the County inspect the property to determine whether the violations have been corrected.

ORDERED this 15<sup>th</sup> day of October 2009.

Signed: ORIGINAL SIGNED  
Margaret Z. Ferguson  
Baltimore County Hearing Officer

**NOTICE TO RESPONDENT:** The Respondent is advised that (1) pursuant to §3-6-206(g)(2) of the Baltimore County Code, the Respondent may make written application to the Director of the Department of Permits & Development Management within 10 days to modify or amend this order and (2) pursuant to §3-6-301(a), Baltimore County Code, the Respondent may appeal this order to the Baltimore County Board of Appeals within fifteen (15) days from the date of this order; any such appeal requires the filing of a petition setting forth the grounds for appeal, payment of a filing fee of \$150 and the posting of security to satisfy the penalty assessed.